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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**

6 * * *

7 Terrance D. Brothers,

8 Plaintiff,

9 v.

10 Dwight Neven, et al.,

11 Defendants.

Case No. 2:17-cv-00641-JCM-BNW

ORDER

12 Presently before the Court is Defendants' motion for screening of Plaintiff's Second
13 Amended Complaint ("SAC"). (ECF No. 52.) Plaintiff did not respond to this motion.

14 **I. BACKGROUND**

15 Brothers filed his application for leave to proceed *in forma pauperis* on March 1, 2017 and
16 enclosed his original complaint therein. (ECF No. 1.) Subsequently, this Court granted Brothers'
17 application for leave to proceed *in forma pauperis* under 28 U.S.C. § 1915. (ECF No. 13 at 2.)

18 The Court screened the original complaint and dismissed it in its entirety, with leave to
19 amend. (ECF No. 3 at 5.) The issue with Plaintiff's original complaint was that he sued several
20 "supervisory-defendants" (based on their deliberate indifference to his serious medical needs) but
21 had not alleged that these defendants actually knew about Plaintiff's medical issues, as required by
22 Ninth Circuit law. (*Id.*)

23 Plaintiff filed his First Amended Complaint ("FAC") on March 28, 2018. (ECF No. 5.) The
24 Court again screened the FAC and allowed Brothers' sole deliberate indifference claim against
25 defendants Neven and Aranas to proceed. (ECF No. 6 at 8.) The Court further ordered that
26 Defendant Williams be dismissed from this action without prejudice. (*Id.* at 9.)
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1 Neven then filed a motion to dismiss Brothers' FAC on July 10, 2019. (ECF No. 19.) The
2 Court granted this motion, in part, because Plaintiff improperly attempted to sue Neven in his
3 official capacity for monetary damages. (ECF No. 49 at 5-6.) But the Court gave Plaintiff leave to
4 amend his complaint, which he did by filing a SAC. (*See* ECF No. 49.)

5 Defendants now move the Court to screen this SAC. (ECF No. 52.) Defendants assert that
6 "[p]ursuant to the PLRA, courts must screen any complaint filed by a prisoner." (*Id.* at 1.)
7 Defendants cite no controlling authority for this proposition, and the Court has not found any either.
8 There is, however, persuasive authority in the Ninth Circuit that provides that this Court is *not*
9 required to screen every amended complaint a litigant files. *See, e.g., Olausen v. Murguia*, No.
10 3:13-CV-00388-MMD, 2014 WL 6065622, at *3 (D. Nev. Nov. 12, 2014) ("[T]he screening
11 provision does not require a court, either explicitly or implicitly, to screen every time a plaintiff
12 seeks to amend the complaint."). This makes sense; when defendants file a responsive pleading,
13 such as a motion to dismiss, the need for screening is obviated. *See, e.g., Nordstrom v. Ryan*, 762
14 F.3d 903, 907 n.1 (9th Cir. 2014) (noting that the purpose of Section 1915 is to ensure that "the
15 targets of frivolous or malicious suits need not bear the expense of responding"). Accordingly, the
16 Court is not required to screen Plaintiff's SAC in this case. However, in its discretion, the Court
17 will grant Defendants' motion (ECF No. 52) and screen Plaintiff's SAC.

18 **II. SCREENING**

19 Plaintiff's SAC is a one-count complaint, alleging that Defendants Neven and Aranas
20 violated the Eighth Amendment by being deliberately indifferent to Plaintiff's serious medical
21 needs. (ECF No. 49.) The factual allegations contained in Plaintiff's SAC are substantially similar
22 to those contained in his FAC, and the Court will not repeat them here. (*See* ECF Nos. 5, 49.) And,
23 just as the Court found that these factual allegations were sufficient to state a deliberate indifference
24 claim in his FAC (ECF No. 6 at 8), the Court finds that they are also sufficient to state a claim in
25 his SAC.

26 However, in Plaintiff's SAC, he impermissibly sues both Defendants in their official and
27 personal capacities and seeks monetary damages only. (*See* ECF No. 49 at 2, 17.) As the Court
28 previously held in its order on Defendant's motion to dismiss, these Defendants may not be sued

1 in their official capacities for monetary damages. (ECF No. 46 at 5-6 (*citing Will v. Mich. Dep't of*
2 *State Police*, 491 U.S. 58, 71 (1989) (“We hold that neither a State nor its officials acting in their
3 official capacities are ‘persons’ under § 1983.”)).) But they may be sued in their individual
4 capacities for monetary damages. *See Cerrato v. San Francisco Cmty. Coll. Dist.*, 26 F.3d 968, 973
5 (9th Cir. 1994) (persons may be sued in their individual capacities under Section 1983 for monetary
6 damages). Accordingly, Plaintiff may not proceed with his claims against Defendants in their
7 official capacities but may proceed against Defendants in their individual capacities.


8 **III. CONCLUSION**

9 IT IS THEREFORE ORDERED that Defendants’ motion for screening of Plaintiff’s
10 Second Amended Complaint (ECF No. 52) is GRANTED.

11 IT IS FURTHER ORDERED that Plaintiff’s claims against Defendants Neven and Aranas
12 in their personal capacities may proceed.

13 IT IS FURTHER ORDERED that Plaintiff’s claims against Defendants Neven and Aranas
14 in their official capacities are dismissed.

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16 DATED: August 21, 2020

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19 BREND A WEKSLER
20 UNITED STATES MAGISTRATE JUDGE
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